

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

USAMA J. HAMAMA, et al.,

Petitioners,

vs.

Case No. 17-cv-11910

HON. MARK A. GOLDSMITH

REBECCA ADDUCCI, et al.,

Respondent.

ORDER REGARDING DISCOVERY

On September 29, 2017, the Court issued an order permitting the parties to serve discovery requests and to file objections to those requests. See 9/29/2017 Order (Dkt. 115). These requests and objections were permitted in order to give the parties an opportunity to begin their discussions on the subject of discovery and to inform the Court of their respective positions. The requests and objections were then discussed at status conferences conducted on November 8, 13 and 20. In the last conference, it appeared that there was no consensus by the parties regarding the discovery issues. This necessitates a ruling from the Court as to how to proceed in that regard.

Although this case was initially focused on the imminent removal of putative class members, Petitioners more recently turned their attention to the detention of putative class members and the probability, as they see it, that their detention will extend indefinitely, in violation of their rights. To pursue that claim, they filed an amended complaint (Dkt. 118), elaborating on that claim, and filed a motion for a preliminary injunction (Dkt. 138), as well. The current discovery that Petitioners seek is targeted on the detention issues and the preliminary injunction motion.

The Government has objected to any discovery on a number of grounds, including the fact that a conference pursuant to Federal Rule of Civil Procedure 26(f) has yet to be held. The Government also noted in the most recent telephonic status conference that it would be disclosing in its response to Petitioners' motion for preliminary injunction information that may be of utility to Petitioners to meet the Government's response.

The Court believes it is not prudent to proceed with discovery at this point for a few reasons. As an initial matter, the discovery that Petitioners seek is extensive and far-reaching. Further, the Government's response to Petitioners' motion for preliminary injunction may supply information that would obviate the need for the significant effort that Petitioners seek to require the Government to undertake. While Petitioners may well have a justifiable concern that they would not be prepared to file a reply brief without additional information, that concern can be addressed by allowing additional time to take discovery and file a reply. It may also be the case that the Government will raise arguments on the merits that would lead the Court to further postpone discovery until the legal issues in connection with that motion and the Government's motion to dismiss (Dkt. 135) are resolved. Because there are too many uncertainties at this time, it is not prudent presently to order the Government to respond to Petitioners' discovery requests.

To protect Petitioners' interest in preparing a reply that fully addresses the Government's arguments, Petitioners may file a motion to extend the time to file a reply brief and to take discovery after the Government's response is filed. This motion must be filed no later than December 8, 2017; any response is due by December 11, 2017. If Petitioners file such a motion, their time to reply to the Government's response will be suspended until further order of the Court.

In any case, it is prudent for the parties to conduct a conference pursuant to Federal Rule of Civil Procedure 26(f), given the time sensitivities of the detention issues raised by Petitioners.

The conference shall be completed by December 5, 2017. The parties shall then submit a report to the Court by December 12, 2017.

SO ORDERED.

Dated: November 22, 2017

s/Mark A. Goldsmith
HON. MARK A. GOLDSMITH
United States District Judge

CERTIFICATE OF SERVICE

I hereby certify that on this date a copy of the foregoing notice was served upon the parties and/or counsel of record herein by electronic means or first class U.S. mail.

Dated: November 22, 2017

s/Marlana Williams
In the absence of Karri Sandusky
Case Manager